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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/807,611

03/24/2004

Dennis West

NUTO:001

3658

7590
Jonathan Spangler
2556 VIA TORINA
DEL MAR, CA 92014

10/04/2007

EXAMINER

LEUNG, PHILIP H

ART UNIT

PAPER NUMBER

3742

MAIL DATE

DELIVERY MODE

10/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/807,611

Applicant(s)

WEST, DENNIS

Examiner

Philip H. Leung

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☒ Other: PTO-90C

DETAILED ACTION

1. Claims 28-30 are objected to as the term “The system” at line 1 of each claim should read “The method” instead. Correction is required.

2. Claims 15-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added limitation “unaltered by processing” at line 1 of claim 16 and in claims 19, 20 and 25-28 is considered as new matter NOT supported by the original disclosure. It is only disclosed that the potatoes are fresh and cleaned, nothing indicated that the potatoes are “altered” or “unaltered” by processing. Regarding the applicant’s remark that “unaltered potatoes are *only* washed prior to being packaged as set forth on page 7, lines 10-13” is not entirely accurate. As stated at the recited passage, it is only disclosed “the fresh potatoes are washed one or more times prior to being packaged”. That is, it does not exclude other processing steps as it does not contain the word “only” as argued. Cancellation of the new matter is required.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being obvious over Luraschi (FR 2 814 445) (previously cited), in view of the Admitted Prior Art as shown on page 2, lines 12-21 (hereinafter, APA).

Luraschi shows a system and method for providing fresh potatoes for consumption, comprising: a container (1) of suitable construction to be placed in and withstand a cooking environment capable of cooking fresh potatoes; and one or more fresh potatoes (3) placed within said container (see Figures 1-4, the title and the English abstract). Although it use a “chemical process” to prevent the fresh potatoes from germinating, it is obvious that the extra step can be skipped if not desired as microwave cooking of fresh whole potatoes washed and “unaltered by processing” in a container is a common practice as admitted by the applicant (see page 2 of the specification). It would have been obvious to an ordinary skill in the art at the time of invention to modify Luraschi to pack the fresh potatoes without other processing steps to lower processing cost, in view of the teaching of APA. In regard to 17, the container of Luraschi is constructed from microwaveable plastic and includes a tray (1) and a cover (film layer 2)

5. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being obvious over Luraschi (FR 2 814 445), in view of the Admitted Prior Art as shown on page 2, lines 12-21 (APA), as applied to claims 16 and 17 above, and further in view of Fritz (US 5,607,709) (previously cited).

Luraschi combined with APA shows every feature as except for the explicit showing of inclusion of cooking instructions with the system. However, it is routine in the art of food packages to include cooking instructions with the package to help the consumer to heat the food.

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Anyway, Fritz shows a microwave cooking container with a lid and a portion 32 containing cooking instructions (see Figures 1-4 and col. 3, lines 13-16). It would have been obvious to an ordinary skill in the art at the time of invention to modify Luraschi combined with APA to provide cooking instructions to assist the consumer with the cooking process, such as the length of cooking times as set forth in the abstract, so that the consumer can obtain optimal cooking result, in view of the teaching of Fritz.

6. Claims 20-30 are rejected under 35 U.S.C. 103(a) as being obvious over Luraschi (FR 2 814 445), in view of the Admitted Prior Art as shown on page 2, lines 12-21 (APA), as applied to claims 16 and 17 above, and further in view of Pickard et al (US 5,220,909) (previously cited).

Luraschi shows every feature as except for the inclusion of cooking ingredients and eating utensils with the system. Pickard shows a food heating meal system with a package containing food portions, food condiment package 43 and eating utensils 45 (see Figure 1 and col. 4, lines 34-50). It would have been obvious to an ordinary skill in the art at the time of invention to modify Luraschi combined with APA to include a potato composition and eating utensils in a same package so that the consumer can bring the package along and consume it as a meal for better tasty potatoes and conveniences, in view of the teaching of Pickard. In regard to claim 26, the number of cleaning times would be a matter of engineering tradeoff between cost and cleanliness. In regard to claim 21, the use of butter, margarine or dressing for serving with potatoes is well known.

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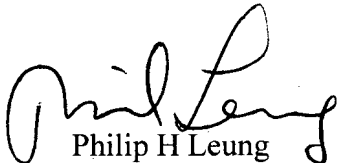
7. Applicant's arguments filed 7-16-2007 have been fully considered but they are not persuasive. It is submitted that the new limitation "unaltered by processing" is new matter not supported by the original disclosure. Although the word "fresh" may be interpreted as "unaltered by processing", however, the same must be defined as such in the original disclosure. Therefore, it must be given in its broadest reasonable interpretation, that is, "not stale, not spoiled, not cooked and not decayed" as defined in the Webster's New Collegiate Dictionary. The claimed invention is unpatentable over Luraschi as the potatoes in Luraschi are "fresh" as shown in the original disclosure. Although the potatoes have been chemically treated, they are still "fresh". Moreover, the apparent purpose of the chemical treatment in Luraschi is to prevent the potatoes from becoming rotten or stale, that is, to keep them in a fresh state for a longer period. Most importantly, microwave cooking of fresh whole potatoes "unaltered by processing" in a container is a common practice in an average household having a microwave oven as admitted by the applicant (see page 2 of the specification). Furthermore, the gist of the invention is to prepackage fresh potatoes for microwave cooking by consumers located remotely from the packaging facility and this is clearly shown by Luraschi. Therefore it would have been obvious to an ordinary artisan just wash the fresh potatoes without other processing steps to lower processing cost in view of the combined teaching of Luraschi and the admitted prior art.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H Leung whose telephone number is (571) 272-4782.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on (571) 472-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Philip H Leung
Primary Examiner
Art Unit 3742

P.Leung/pl
9-18-2007



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U.S. Patent and Trademark Office**

Address: COMMISSIONER FOR PATENTS
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10807611	3/24/2004	WEST, DENNIS	NUTO:001

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EXAMINER

Philip H. Leung

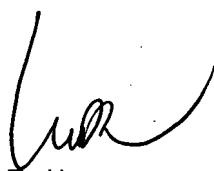
ART UNIT	PAPER
3742	20071001

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Please disregard the Non-compliance paper dated September 25, 2007


Tu Hoang
SPE AU3742